

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
November 8, 2010**

Members Present

Dave Whaley
Mike Haxby
Glenna Christensen
Roy Galbreath
James Arnold
Paul Collins, MD

James Alcorn
John Greenfield
Senator Andreason
Jasen Carrier
Steve Millard
Gardner Skinner

Members Absent

Linda J. Sams
Rian Van Leuven
Clay Atwood
Representative Takasugi

Industrial Commission

Chairman R.D. Maynard
Commissioner Thomas E. Limbaugh
Commissioner Thomas P. Baskin
Director Mindy Montgomery
Secretary Nancy Beeson

Opening Remarks and Introduction of New Members:

Acting Chairman Dave Whaley introduced and welcomed the new members to the Advisory Committee.

Minutes:

Roy Galbreath moved to approve the Minutes of August 25, 2010 as written. James Arnold seconded the motion, and the motion carried.

Proposed Changes to Idaho Code § 72-438 – Professional Firefighters of Idaho:

Mike Walker, Rob Shoplock, Gayatri Reddy, MD, MPH, Karl Malott, Grant Hamilton, Mark Niemeyer, and Dan Friend were in attendance on behalf of the Professional Firefighters of Idaho (PFFI) and the Idaho Fire Chiefs Association to support the effort to amend the Occupational Disease laws in Idaho Code § 72-438. Mike Walker executive vice president of the PFFI, representing approximately 1,100 firefighters around the state presented the issues in support of the proposed legislation. Mr. Walker stated that many different states were researched including Washington, Alaska, Montana, and New Mexico to find the most fair and balanced change to the current code.

Mr. Walker reported that under the proposed changes regarding presumptions, full-time firefighters developing one of the specified cancers or listed occupational diseases after the required number of years of employment as a firefighter, would receive compensation benefits

unless the employer or insurer is able to show by a preponderance of evidence that the claimant was engaged in conduct or activities outside of employment, or had a family history that posed a significant risk of developing one of the listed diseases. The burden of proof would thus be shifted to the employer.

Mr. Walker noted that approximately 42 states have passed presumptive legislation dealing with some or all of the diseases contained in the proposed legislation. He noted that most of the language in the proposed legislation was taken from the state of New Mexico who recently passed presumptive legislation for firefighters. Changes proposed in Idaho Code § 72-438 include a list of cancers, specifies what would disqualify a person from the presumption, and establishes baseline health testing of all firefighters annually and upon hire. In analyzing the costs to the workers' compensation system associated with passage of this legislation, Mr. Walker noted that the estimated costs would be minimal. Rob Shoplock stated that PFFI's goal and objective is to be fair to employers and employees. PFFI is actively establishing programs across the state to keep firefighters at optimum health.

Dr. Gayatri Reddy, an Internal Medicine physician and currently an Occupational and Environmental Medicine Resident at the Johns Hopkins University Bloomberg School of Public Health appeared on behalf of the International Association of Fire Fighters (IAFF) and on behalf of the Professional Fire Fighters of Idaho.

Dr. Reddy reported that the IAFF is an international union that is affiliated with the AFL-CIO and the Canadian Labour Congress and currently represents almost 300,000 paid professional fire service employees in the United States and Canada. The IAFF has been actively involved in improving the health and safety of firefighters for more than 90 years. Dr. Reddy stated that this is a critical activity for a workforce in which fatalities and early retirement due to work-related disease occur regularly. She is currently on rotation as the resident doctor at IAFF and has quickly learned to appreciate the great voluntary risks these individuals take in order to save and benefit the lives of others. Dr. Reddy discussed the occupational risks of cancer, infectious diseases and cardiac disease for firefighters.

Dr. Reddy stated that the proposed changes in the workers' compensation law are based on research and studies that firefighters are at greater risk for certain diseases. The presumption for the listed diseases can make a dramatic difference in the lives of firefighters who develop these diseases during their careers.

The speakers responded to questions from the members and the members suggested some possible changes to the proposed legislation. It was also suggested that a subcommittee be formed to determine the merits of the legislation, suggest possible language changes and then make a recommendation to the Advisory Committee.

Volunteers to serve on the subcommittee were: Roy Galbreath, Chairman, Jasen Carrier, Rob Shoplock, Mike Walker, Michael Kane, Woody Richards, Dave Whaley, Paul Collins, and Commissioner Baskin.

Subcommittee Reports:

Occupational Disease Laws – John Greenfield – Mr. Greenfield reported that the subcommittee members have not responded to his request for information on their issues and concerns with the occupational disease laws. Mr. Greenfield would like to propose legislative changes to reverse the decision by the Supreme Court in Nelson v. Ponsness-Warren. Mr. Greenfield stated that he will reconvene the subcommittee prior to the first of the year and will have the Supreme Court decision sent to the members. Mr. Greenfield suggested that the subcommittee may look at the proposed firefighter legislation at the same time.

Reasonable Payment of Medical Fees (Neel) – James Arnold. – Mr. Arnold stated that there was no way any consensus would be reached on this issue and therefore, the subcommittee should be disbanded. Mr. Arnold stated that he has no sense from the defense attorneys that there is any interest in pursuing changes at this time. Commissioner Baskin asked if changes to Idaho Codes §§72-432 and 72-804 would be of interest to discuss in this subcommittee. Mr. Arnold agreed to discuss these proposals with his subcommittee.

Independent Contractor Laws – Christi Simon – Christi Simon, Employer Compliance Bureau Chief, reported that this subcommittee will be meeting the last of November or the first of December and will have a report at the next Advisory Committee meeting.

Other Issues: In order to rein in exorbitant fees sometimes charged by physicians for depositions and testimony in workers' compensation cases, Mr. Arnold suggested regulations to cap fees be drafted and placed in the medical fee rules. Mr. Arnold will work with the Commission's Medical Fee Schedule Analyst, Patti Vaughn, to draft language in regard to the above mentioned fees.

Industrial Commission Report:

Status of Proposed Statutes - Commissioner Limbaugh reviewed the proposed rulemaking and legislative changes the Commission has submitted. Commissioner Limbaugh reported that Idaho Codes, § 72-432- and § 72-804 have been withdrawn and will be re-visited in the Advisory Committee's subcommittee.

Commissioner Limbaugh also noted that Idaho Code § 72-523 was given the okay by the Governor's office and the Governor is considering the legislation as part of his initiative. The Governor has requested a meeting with the Commissioners.

Commissioner Limbaugh stated that Idaho Code § 72-205, Public Employment, has been submitted and approved for legislative review. The changes are strictly housekeeping and remove the reference to the State Insurance Fund from School District coverage.

Status of Submitted Rules - Commissioner Limbaugh stated that the Commission held public hearings for the amendments to IDAPA 17.02.08 and 17.02.09. The Commission is working on changes to the proposed rules before submitting the pending rules as a result of the

public hearings and written comments received. Ms. Vaughn is continuing to work through the hearing comments and applying some of the changes into the rules.

Commissioner Limbaugh reported that in the amendments to IDAPA 17.02.10 and 17.02.11 the controversial changes dealing with insurance carriers and self-insured employers were removed. The rule was separated into two separate rules to add more specificity for applying for self-insured authority.

He also noted that IDAPA 17.02.05 was changed to reflect the changes in statute approved by the legislature last year.

Election of Chairman:

Acting Chairman, Dave Whaley, stated that the current Chairman was unsure of her ability to fulfill her term this year and therefore a new Chairman was needed. Mr. Greenfield nominated Mike Haxby to Chair the Advisory Committee for the next year and was unanimously approved.

ISIF Update:

Industrial Special Indemnity Fund Report – Industrial Special Indemnity Fund (ISIF) Manager James Kile reported that legislation to sunset the ISIF is still progressing and that no changes have been made to the legislation that the Advisory Committee approved.

Next meeting date was scheduled for February 8, 2011.